

Section 11.1: Procurement Standards & Guidelines

The following Procurement Standards & Guidelines must be followed:

Child and Adult Care Food Program (CACFP) regulations require that all sponsors have standards that are followed when food or supplies are purchased.

All **for-profit institutions** participating in the CACFP must comply with procurement requirements as stated in **7 CFR 226**. These guidelines specify, among other provisions, that the *small purchase threshold* be set at \$100,000. This means for any purchase that exceeds the *small purchase threshold* of \$100,000, a formal solicitation must be conducted.

All **non-governmental, non-profit institutions** participating in the CACFP must comply with procurement requirements as stated in **7 CFR 3019**. These guidelines specify, among other provisions, that the *small purchase threshold* be set at \$100,000. This means for any purchase that exceeds the *small purchase threshold* of \$100,000, a formal solicitation must be conducted. Please note that an institution may have regulations establishing a *small purchase threshold* of less than \$100,000 in which case a formal solicitation would be required.

All **public institutions** participating in the CACFP must comply with procurement requirements as stated in applicable **State or local laws** and as stated in **7 CFR part 3016**. These guidelines specify, among other provisions, that the *small purchase threshold* be set at \$100,000. This means for any purchase that exceeds the *small purchase threshold* of \$100,000, a formal solicitation must be conducted. Please note that it is very likely that State or local laws for public institutions have established a *small purchase threshold* of less than \$100,000 in which case a formal solicitation would be required. Please ensure that you are in compliance with all State or local procurement guidelines.

Note: Unless otherwise specified by State or local procurement guidelines, the best practice is to obtain written price quotes from three (3) or more vendors for purchases that do not exceed the *small purchase threshold*.

These standards are furnished to ensure that materials and services are obtained efficiently and economically. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

- a) No employee, officer, or agent of this institution shall participate in selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - 1) The employee, officer or agent;
 - 2) Any member of immediate family;
 - 3) His or her partner; or
 - 4) An institution which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Misuse of funds is punishable under the laws of Arizona.

- b) Proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made on lease versus purchase alternatives and any other appropriate analysis to determine which approach would be the most economical.
- c) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:
 - 1) Including qualified small and minority businesses on solicitation lists.
 - 2) Assuring that small and minority businesses are solicited whenever they are potential sources.
 - 3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;
 - 4) Establishing delivery schedules which will encourage participation by small and minority businesses.
 - 5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration as required.
 - 6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.
 - 7) Taking similar appropriate affirmative action in support of women's business enterprises.
- d) Procurement procedures shall not restrict or eliminate competition. Examples of restricting competition include, but are not limited to:
 - 1) Placing unreasonable requirements on firms in order for them to qualify to do business.
 - 2) Non-competitive practices between firms.
 - 3) Institutional conflicts of interest.
 - 4) Unnecessary experience and bonding requirements.
- e) The institution shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:
 - 1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:
 - i) Incorporate a clear and accurate description of the technical requirements for the material, product, or services to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall

set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand, which must be met by offerors, shall be clearly stated.

- ii) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 2) Awards shall be made only to the lowest responsible and responsive bidder that possesses the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- f) Program procurements shall be made by one of the following methods:
- 1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies, or other property costing in the aggregate not more than the *small purchase threshold* stated above. Institutions shall comply with State or local small purchase dollar limits under the *small purchase threshold*. If small purchase procedures are used for a procurement under the Program, price or rate quotation shall be obtained from an adequate number of qualified sources.
 - 2) In competitive sealed bids (formal advertising), sealed bids will be publicly solicited and a firm-fixed price contract (lump sum or unit price) will be awarded to the responsible and responsive bidder whose bid meets all the material terms and conditions and evaluation criteria set forth in the invitation for bids and is the lowest price.
 - i) In order for formal advertising to be feasible, appropriate conditions must be present, including the following:
 - A. A complete, adequate, and realistic specification or purchase description is made available.
 - B. Two or more responsible suppliers who are willing and able to compete effectively for the institution’s business.
 - C. The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

- ii) If formal advertising is used for procurement under the Program, the following requirements will apply:
 - A. A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
 - B. The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.
 - C. All bids shall be opened publicly at the time and place stated in the invitation for bids.
 - D. A firm-fixed price contract award shall be made by written notice to the responsible and responsive bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.
 - E. Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program. The reasons for the rejection shall be made part of the procurement file.

Note: For purchases over \$25,000 the institution must verify the status of the vendor or contractor regarding debarment and suspension. This can be verified at <http://epls.arnet.gov/>.

- 3) In competitive discussions, proposals will be requested from a number of sources and the Request for Proposal is publicized. Discussions may be conducted with more than one of the vendors submitting offers and either a fixed-price or cost reimbursable type contract is awarded, as appropriate. If competitive discussions are used for a procurement under a grant, the following requirements shall apply:
 - i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals (RFP) shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.
 - ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and shall be listed in the relative order of importance. No other factors or criteria may be used in the evaluation unless set forth in the RFP.

- iii) The institution shall provide mechanisms for technical evaluation of the proposal received, determinations of responsible offers for the purpose of written or oral discussions, and selection for contract award.
- iv) The institution shall award a contract to the offeror whose proposal is determined in writing to be the most advantageous to the procuring party based on the factors set forth in the request for proposals. Unsuccessful offerors may be notified in writing of the award.

Note: For purchases over \$25,000 the institution must verify the status of the vendor or contractor regarding debarment and suspension. This can be verified at <http://epls.arnet.gov/>.

- 4) Noncompetitive procurement is solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive procurement will be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive discussion procedures. It is important that proper documentation and justification be included in the procurement file. Circumstances under which a contract may be awarded by noncompetitive procurement are limited to the following:
 - i) The item is available only from a single source.
 - ii) Public emergency exists which does not permit the delay which would occur if formal procurement procedures were used.
 - iii) FNS authorized noncompetitive negotiation.
 - iv) After solicitation of a number of sources, competition is determined inadequate.
- g) The cost plus a percentage of cost method of contracting shall not be used. Instructions shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under the Program shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.
- h) Institutions shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.
- i) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law, or Food and Nutrition Services (FNS):

- 1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- 2) All contracts in excess of \$10,000 shall contain suitable provisions for termination. Such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- 3) All contracts awarded in excess of \$10,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).
- 4) Where applicable, all contracts awarded by institutions in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight hours and a standard work week of 40 hours. Work in excess of the standard work day or week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data. These requirements are found in §3015.175. All negotiated contracts (except those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for five years after institutions make final payment and all other pending matters are closed.
- 6) Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under

nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

- 7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- j) Institutions shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- k) Using geographic preference in procurement is prohibited under USDA entitlement programs (3016.60 (c)).
- l) Awarding of contracts under USDA entitlement programs to firms “that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals” for such procurements are not allowed. The purpose of this regulation is to “ensure objective contractor performance and eliminate unfair competitive advantage.” This ruling does not prohibit consultations between program operators and industry (3016.60 and 3019).